

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

74-2317-8

To be argued by
IVAN FISHER

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 74-2317-8

UNITED STATES OF AMERICA,

—against—

CARLOS BAEZA,

Appellee,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANT'S BRIEF

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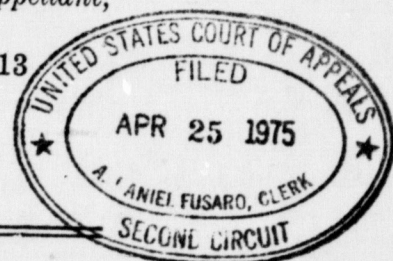


TABLE OF CONTENTS

STATEMENT OF FACTS.....	2
A. The Trial.....	2
B. The Toscanino Hearing.....	10
POINT I The District Court should have declined personal jurisdiction over the appellant, since he was forcible brought to this country by the efforts of American agents and in violation of Chilean law.....	15
POINT II Pursuant to Rule 28(i) of the F.R.A.P., Appellant Baeza hereby adopts the briefs and arguments of the co-appellants, as they may be applicable to him.....	22
CONCLUSION.....	22

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Fiocconi v. Attorney General</u> , 339 F.Supp 1242 (S.D.N.Y. 1972).....	19
<u>Rochin v. California</u> , 342 U.S. 165 (1952).....	21
<u>United States v. Archer</u> , 486 F.2d 670 (2d Cir.1973)....	18
<u>United States v. Russell</u> , 411 U.S. 423 (1973).....	18
<u>United States v. Toscanino</u> , 500 F.2d 267 (2nd Cir.1974)	10,15,18,19
<u>United States, ex rel Lujan v. Gengler</u> , ___F.2d___ (2d Cir. 1975), slip op. 1197.....	18

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APPELLANT'S BRIEF

Carlos Baeza appeals from a judgment of conviction entered March 13, 1975, in the United States District Court for the Eastern District of New York.

Indictment 74 Cr.14 charged the appellant Baeza, along with nine others with one count of conspiracy to import and distribute narcotics in violation of 21 U.S.C. 812 et seq. The appellant was tried together with the co-defendants, Alfonso Melo Obando and Alfredo Vargas Vega, in the United States District Court for the Eastern District of New York before the Honorable Jacob Mishler and a jury. All the defendants on trial were found guilty as charged and on March 13, 1975, the appellant Baeza was sentenced to eight years in prison.

STATEMENT OF FACTS

A. The Trial

The government's chief witness against Baeza was one Carlos Munoz, a Chilean national, who, since January, 1974, has been employed as a liaison officer between the Chilean government and the United States authorities in Chile with regard to narcotics, and receives a salary of \$250.00 per month (280, 492).*

In June, 1973, however, Munoz was just an ex-seaman in Valparaiso, Chile when, he alleged, he accidentally met an acquaintance named Riquelme. Riquelme told Munoz he was trying to find someone to travel to Canada and the United States either for some unexpressed purpose (289-90) or to smuggle money (521-2). Munoz expressed interest and went with Riquelme to 826 Islandia Street in Santiago where he met Baeza and Osorio, an indicted co-defendant (293-5). Munoz showed them his passport and merchant marine booklet, and was told that the purpose of the trip was to carry two suitcases from Santiago to Canada, where someone from New York would pick them up. Munoz was only told that the contents of the suitcases were valuable (297-300). Munoz asked whether the trip would be dangerous and was told that arrangements had been made with the Chilean police and customs officials and that there had been no problem in the past (301). Munoz was to be paid \$2,000.00 plus expenses (302). He concluded from the discussion that the contents of the suitcases was cocaine (543).

*References without prefix are to the trial minutes. References prefixed by the letter H are to minutes of the Toscanino hearing.

When Munoz left the house he went to the American Embassy in Santiago, but was unable to speak with a customs officers. He then went to the Canadian Embassy and told an official there about the trip (303, 309-10).

Ten days later he met Osorio and Baeza again at the Islandia street house. Osorio gave him \$700.00 in Chilean currency and Baeza told him the merchandise was not yet ready, but when it was Munoz was to bring his own clothes to fill up the suitcases. Munoz then reported to the Canadian Embassy (312,316).

On July 2, 1973, Munoz received a visa from the Canadian Embassy and was brought by a Canadian official to the American Embassy in Santiago where he met DEA agents Franguille, Cecil and Bachrach (318-22). There he told the agents that Riquelme had originally asked him to smuggle cocaine (524), but he refused to divulge Riquelme's name (525).

Munoz made air travel arrangements to fly to Montreal on July 9th, but later received a call from someone on behalf of Baeza who said that the arrangements should be cancelled and rescheduled for a week later (325, 329-30). Munoz followed instructions, but the flight was again cancelled (330-1).

Finally, Munoz met Osorio again at the Islandia street house and was told to make the trip to Canada by way of England. Munoz received another \$700.00 and Osorio drove him to get the tickets for the trip, now scheduled for August 3, 1973. Osorio also told Munoz to meet him on August 2nd (333-6).

On August 2nd Munoz met Baeza and was told to make the pick-up of the suitcases the next day at Providencia Avenue (338). On that day, Munoz met Baeza who gave him two suitcases which Munoz packed with his clothes, and Baeza then drove Munoz to the airport (338-41). Munoz received another \$500.00 for expenses and was told to call Osorio from Montreal (341).

Munoz boarded the plane, as did DEA agent Cecil, and Munoz slipped Cecil a note about Baeza's instructions before Cecil disembarked at Buenos Aires. Munoz continued to Canada, via London, and was met by RCMP sergeant Gillespie in Toronto, who accompanied Munoz on a flight to Montreal (346). Munoz met other Canadian police in his hotel room, and a sample from the interior of the suitcase was taken with a hypodermic syringe. It was cocaine (602-3, 634).

Munoz then called Osorio in Santiago and gave him the name of his hotel, while Osorio told him to wait there until Tuesday when someone from New York would arrive to pick up the suitcases (350).

Munoz was also to ask the person who picked up the suitcases for \$1,000.00, of which Munoz could keep \$300.00 and the other \$700.00 would be given to a second person who was expected to arrive with two other suitcases. On August 7th, Munoz received a call from someone named Jose. They met and Munoz requested the \$1,000.00. The money was wired from New York, after a telephone call by Jose, and Munoz gave Jose the two suitcases he had brought from Chile. The next day another man, Victor

Contreras, arrived, and gave his suitcases to Jose, while Munoz gave Contreras \$700.00 (364-82).

Munoz then called Osorio and told him that the delivery had been made, and Osorio told Munoz to return to Chile. When Munoz arrived in Santiago he saw Baeza who asked if he knew that the courier had been arrested and they had lost \$150,000.00 (383-7).

Munoz then returned to Valparaiso, and at the end of August he met with Baeza and Osorio in Baeza's restaurant in Santiago, where he heard that someone had been arrested in New York (388-91).

Munoz again met with Baeza and Osorio in Baeza's house on September 15 where they discussed a second trip (391-3). Ten days later, Munoz was told to obtain a United States visa, since he was to take two more suitcases and return with \$25-30,000. Munoz would receive \$5,000.00 for his work. Munoz reported to the American agents (393-5). After one cancellation of this trip, Munoz received two more suitcases on November 5th and was driven to the airport by Baeza's chauffeur. Munoz arrived in Toronto on November 6th (404-9, 422). In Canada, Munoz received a call from Osorio who told him to wait since the people in New York did not have the money. On November 8th, Munoz called Baeza's home but was informed that Baeza had an accident (425-30).

Since no one came to collect the suitcases, Munoz went to New York on November 13th. He called Chile and spoke

to a woman who told him to wait there, and someone would call. Similar calls were made over the next two days, each time Munoz being told to wait. On November 15th he received a local call from someone who said he would make a pick-up, and the next day the defendant Obando arrived, picked up the suitcases and gave Munoz \$13,000.00 (433-4, 472-80).

Munoz again called Chile, and told a woman who answered the phone that delivery had been made and he was returning to Chile with \$13,000.00. Munoz reached Chile on November 18th, where he was met by a man named Lucho, to whom he gave \$12,500.00 (484-9).

Munoz received \$4,000.00 from the United States government in addition to his job as liaison officer (488-9, 492). He denied that his discussions with Baeza and Osorio concerned the importation of automobile parts or the purchase of chickens, eggs or butter (548-50).

Various agents of the Royal Canadian Mounted Police and the DEA testified about the surveillance of Munoz in Canada and New York, and the arrests of Jose Morales and Victor Contreras in Canada, and Obando and Vega in New York (582-823).

THE DEFENSE

The defense witnesses, Juan Jose Osorio, Theresa Baeza, Laura Baeza and Mirta Acra, all testified by videotape deposition, recorded in South America.

Osorio, an indicted co-defendant, testified that he and Baeza had formed three companies in 1973 for importing automobile parts from Canada and the United States into Chile. The companies, Obecon, Lotus and Hurly, sought importation permits and a line of credit from banks in Chile.

Osorio first met Carlos Munoz at the home of Baeza's mother on Islandia Street in June, 1973. Munoz wanted to come into the business and was to go to Canada because he alleged he had connections there with exporters of auto parts. On this occasion they talked about the difference in prices of auto parts in Canada and the United States. They agreed to meet Munoz again on the day he was leaving to complete arrangements. Osorio called Munoz in Canada only to tell him it was impossible to get a line of credit for Chile and to advise Munoz to return home. When Munoz returned, he told Osorio that he had been unable to complete his part of the agreement but that he was soon returning to Canada and would try again. Munoz also told Osorio that he could be of help in obtaining a line of credit and an import permit from a Chilean bank. However, the permit applications for the three companies, filed from July to September, 1973, were not granted. In November, Munoz proposed beginning a truck transport business with

Osorio and Baeza, but they were not interested.

Theresa Baeza, the defendant's wife, Laura Baeza, his mother, and Mirta Acra, his sister, testified that Munoz was at the Islandia Street address in June, 1973, conversing with Baeza and Osorio. The conversation, which was carried on in normal tones of voice in a room adjoining the kitchen where the women were, was clearly overheard. It was only about auto parts, motor fluid and motor oil. Osorio gave Munoz a list of various auto parts and asked him to find out prices.

The witnesses also described the events of November 8, 1973, when the Chilean police raided the wedding party of Baeza's sister, Mirta. At that time, the police searched the house, opened the wedding presents and arrested all the men.

Theresa Baeza testified in addition that she and her husband had won a lottery in Chile and had bought their home and Baeza's restaurant with their winnings.

THE GOVERNMENT'S REBUTTAL

Selin Valenzuela testified that he is charged with three indictments in the United States for cocaine trafficking, and, in return for a deal from the government to accept a plea to one indictment to cover the others, he has agreed to become a cooperating witness. He knows he would have been eligible to receive a sentence of about 130

years in jail if convicted on all counts, but now expects to receive "a minor sentence" (1036-7, 1062-6).

In June, 1972 he was living in Santiago and was a cocaine manufacturer. He had eight laboratories and more than 20 employees (1040, 1083-4). He was paying off the Chilean police and "on some occasions they (the Chilean police) were my partners" (1085). At that time, he alleged, Baeza asked him to supply him with cocaine, and they agreed at \$1,500 per kilo. Baeza wanted "my whole production" (1040-1). Valenzuela said he sold Baeza cocaine from June, 1972 to May, 1973 on about ten or twelve occasions amounting to about 100 kilos in all (1041, 1049). Deliveries were made personally by Valenzuela to Baeza and Osorio at Baeza's home, where Baeza would test the merchandise (1047-52).

Valenzuela was in jail in Chile three times, once for a narcotics offense, once while being detained before being shipped to the United States, and once for shooting and attempting to kill his wife in April, 1973. He was also in a mental institution in Chile after the attempted murder of his wife, but this was only because he was pretending to be insane (1056, 1069, 1079, 1165-6). He was tortured in jail in Chile (1070).

B. The Toscanino Hearing

A hearing was held pursuant to United States v. Toscanino, 500 F.2d 267 (2d Cir.1974) to inquire into the manner in which the appellant was brought to the United States from Chile.

Charles Cecil, a Drug Enforcement Agent in Santiago, Chile, from December 1972 to January, 1975, testified that the Chilean police and the Drug Enforcement Agency cooperate closely in drug investigations (H 72,157), particularly after the overthrow of the Allende regime on September 11, 1973 (H 71).

Cecil became aware of Baeza when Munoz came to the American Embassy. Munoz told Cecil that he did not trust the Chilean police, that they were corrupt and Munoz was afraid his information would be sold by the Chilean police to the defendants (H 105-6). Nevertheless, Cecil told the Chilean police of his interest in Baeza (H 106). Cecil first saw Baeza at the airport in August, 1973 (H 76). He next saw him at Investigations Headquarters on November 9th (H 77,81). Cecil had previously discussed a possible arrest of Baeza with the Chileans, and was told by Inspector Lopez, either that morning or the night before, that Baeza had been arrested with Osorio and others (H 82-92,104). When Cecil arrived, he saw Baeza handcuffed and standing against the wall (H 86-7). Cecil did not talk to Baeza, and did not suggest questions for the Chileans to ask him (H 94,100).

After seeing Baeza, Cecil obtained personal data on him and the other arrestees, inspected documents and their personal papers, including address books and passports. Cecil

asked if the Chileans had seized any drugs, was told no, and suggested a search of Baeza's house, which Lopez assured him would be done (H 106-17,312). Lopez also told Cecil that they were trying to find where Baeza's laboratory was (H 310-11). Cecil told Lopez to tell him when Baeza was released (H 314) and left. He denied being present when Baeza was tortured (H 202), and was surprised at Baeza's arrest since it interfered with Munoz' mission in Canada (H 202-3). Cecil never saw Baeza being mistreated (H 203), nor did he see any interrogation rooms or torture implements (H 101). He acknowledged however that he had heard that those who were incarcerated were tortured (H 73-4). During Baeza's detention, Cecil was kept informed about the progress of Munoz' mission and the difficulty Munoz had in making contact.

After Baeza was indicted in January, 1974, Cecil requested the arrest of Baeza and his expulsion to the United States, along with that of 7 or 8 others (H 165-6). The request was made orally, and not in writing, to the Chilean police (H 162-4). The Drug Enforcement Agency had made request for the arrest of the Chileans on at least 10 occasions, and they were rarely denied (H 162-4). Cecil was aware of an extradition treaty between Chile and the United States (H 75-6), and the Drug Enforcement Agency had previously made extradition requests which had never been refused by the Chileans (H 165). However, Cecil did not request Baeza's extradition (H 164), just that he be detained until he could be sent to the United States (H 168-9).

Cecil was advised that Baeza was arrested on April 18th. He made no request about the treatment Baeza was to receive, but was aware that the Chileans used torture (H 171). Cecil made airline reservations for Baeza and others to come to the United States for May 4, 1974, after being told by the Chileans when Baeza would be handed over (H 170). The reservations were made a week in advance (H 172) and the DEA chartered the whole first class section of Braniff flight 988 for the prisoners, six Chilean policemen and six American agents who were returning to the United States after conducting a training seminar for Chileans in Chile. There was also a Chilean doctor on the plane, at the request of the airline, and the American government paid for everyone's transportation (H 64, 172-84, 192).

Baeza was brought to the airport on May 4th in handcuffs and under armed police guard. It was possible that DEA agent Franguille was in the paddy wagon which brought Baeza and the others to the plane (H 185).

Carlos Baeza, the appellant, testified at the hearing that he and 15 other people were arrested on November 8, 1973 at his sister's wedding party (H 213-14). He was brought to the office of the Director of Drugs, Poblete, and questioned. This was the first time he had ever been arrested, and he had no criminal record (H 216). He was slapped about, made to kneel for an hour and brought to the dungeons (H 216-18). He was given no food, only water, was not permitted to go to the bathroom, and

had no communication with the outside (H 218-19). The next morning he was told by Poblete that "the boss had arrived", and Baeza saw Cecil (H 219-21). Ten minutes later he was taken downstairs, and saw another person who had been arrested with him, covered with blood on his legs, and bleeding from his anus (H 222-3). Baeza was questioned and when he refused to answer he was beaten. After Cecil made a gesture, Baeza was blindfolded, tied to a board and given electric shock through his head, wrist and genitals (H 224-31). He received "a terrific shock" (H 231). Baeza persisted in not answering questions, saying that he did not know what he was charged with, with the result that he was given even more electric shocks (H 231-2). The shocks jolted loose a dental plate, and Baeza heard Cecil say that it had to be removed to prevent him from swallowing it (H 235-6, 239). While being tortured, Baeza was asked questions about a laboratory, his cars and his presence at the airport (H 243-4). He did not lose consciousness from the electric shocks, "but I was practically insane" (H 244).

Baeza was then brought to Inspector Poblete's office, and Poblete told him he was tortured "by orders of the Americans." (H 245). He also threatened to torture Baeza's entire family (H 245). The next day he was again taken to the dungeons. Cecil was not there, but he was given the electric shock treatment again (H 252).

On the third day, he reached an agreement with the police to pay them \$10,000.00 to end the torture and for his release.

The deal was accepted, the torture ended, and he was released on the 18th (H 259-61).

Baeza was again arrested on April 18, 1974 (H 261). He was taken to several police stations over the next few days (H 261-3) and held under the name of Fuentes, although he had his identity card in the name of Baeza on him when he was arrested. On the fourth day, he was able to speak to a civilian inspector who had trouble finding him because he was held under the name of Fuentes. The inspector said that Baeza's mother had filed a writ in the Supreme Court, and Baeza told him that he had not eaten in four days (H 261-7).

Baeza was then taken to another police station, put into a room, and beaten by two policemen because he had complained about not eating. He was then tied to a cot, his nose was held, and excrement was shoved into his mouth, and Baeza was forced to swallow it until he vomited (H 268-9).

Several days later he was taken, along with other Chileans, to the Department of the Interior and was questioned. He was held in prison in Valparaiso for seven days incommunicado, then returned to the Department of Interior. He was then taken to the airport in Santiago, turned over to Cecil and flown to the United States (H 270-8).

He was never convicted of any crime in Chile (H 280-1), and he was never given the opportunity to go any other place other than the United States (H 280), thus violating the Chilean expulsion statute (exh. 6-A) which allows an expelled a choice of three countries to go to.

POINT 1

THE DISTRICT COURT SHOULD HAVE DECLINED PERSONAL JURISDICTION OVER THE APPELLANT, SINCE HE WAS FORCIBLY BROUGHT TO THIS COUNTRY BY THE EFFORTS OF AMERICAN AGENTS AND IN VIOLATION OF CHILEAN LAW.

The testimony and exhibits on the Toscanino hearing showed essentially that Baeza, a Chilean national and resident, was a subject of a narcotics investigation by American DEA agents stationed in Chile. After the Americans informed the Chilean narcotics squad, with whom they had a close working relationship, of their interest in Baeza, the appellant and twelve other men were summarily arrested by the Chilean police on November 8, 1973 at the wedding party of the appellant's sister. According to Baeza's testimony, he was taken to Investigations Headquarters and cruelly tortured for most of the next three days. He was beaten, subjected to electric shock of the head, legs and genitals, and he was consistently brutalized and degraded in an attempt to make him talk. Only a \$10,000.00 bribe procured an end to his agony and confinement, Baeza being released on November 18th. Though Baeza's testimony implicated agent Cecil in the torture, the court below rejected this claim, although it did not make findings about the accuracy of Baeza's allegations of torture. But even agent Cecil testified that he was well aware that after the fall of the Allende regime, the Chilean police authorities regularly tortured people who were incarcerated (H 73-4, 171) and a United

Nations report, judicially noted by the court below (H 74), confirmed the cruelties inflicted by the Chilean authorities on their citizens. Moreover, though Cecil denied participating in the brutality, he did admit seeing Baeza at Investigations Headquarters when he was arrested, examining documents and personal papers, such as address books, which had been taken from Baeza, and suggesting to the Chileans that they search Baeza's home (H 106-13, 312).

On January 11, 1974, Baeza was indicted in the Eastern District of New York, and a warrant of arrest was issued for him.

No request was made to extradite Baeza, however, under the existing treaty between the United States and Chile (H 164), though the Chileans had never refused to extradite anyone the Americans wanted Baeza (H 165). Rather, Cecil simply told the Chilean police orally (H 167-8) about the charge and requested Baeza's arrest and expulsion to the United States. Indeed, the government conceded below that there was a very close association between the DEA and the Chilean drug authorities (H 211-12) and that Baeza was expelled from Chile at the request of the United States government (H 144-5).

Baeza was arrested on April 18, 1974 and held in three different prisons. Baeza testified that he was booked under a fictitious name in order to frustrate a writ of habeas corpus which had been brought to the Chilean Supreme Court on his mother's petition. Indeed, his captors were so angered by his complaints against them that they once again beat Baeza and, with utter barbarity,

forced feces down his mouth.

Cecil was advised of Baeza's arrest, and made reservations to bring Baeza to the United States on Braniff flight 988, about a week in advance (H 171-2). Indeed, the DEA reserved the whole first class section of the flight for Baeza and several other Chileans who had been indicted in the United States,* for six Chilean police and six DEA agents, and a Chilean doctor, with the American government paying all expenses (H 64). On May 4th, Baeza was brought handcuffed and under armed guard to the airport, turned over to the custody of the Americans, and flown to JFK airport in New York.

Officially, the Chilean Undersecretary of the Interior had signed a decree on May 2, 1974 expelling Baeza and six others "without further proceedings". Though Baeza had no record of convictions (H 216, 280), the expulsion decree recited a criminal record (obviously made up out of whole cloth) for robbery, theft, vagrancy, assault, falsification of public documents, housebreaking, attempted homicide, unauthorized possession of firearms, infraction of the foreign exchange law and traffic in narcotics. Moreover, although under Chilean law, an expellee is given the choice of three countries to which he wishes to be expelled (Exh. 6-A), Baeza was given no such choice (H 280). He was simply given to the DEA.

It is appellant's contention that the manner in which Baeza was brought to the United States should not be

* One of these, it was subsequently discovered was the wrong person (H 61).

countenanced by American courts. Even if an expulsion order does exist, that order was obtained by the efforts of American agents and in violation of Chilean law.

In United States v. Toscanino, 500 F.2d 267, supra, this court held that the jurisdiction of the American courts was vitiated where the defendant was kidnapped, tortured and forcibly brought to this country from South America with the participation of American agents. Such activities offended the Due Process Clause and violated American treaty obligations. Though United States ex rel. Lujan v. Gengler, ___ F.2d ___ (2d Cir. 1975), slip op. 1197 denied similar relief where no torture was involved and where the offended government did not protest, neither Lujan nor the fact of the expulsion order which the court below relied upon in denying Baeza relief is dispositive. Indeed, Due Process is still applicable to conduct which "shocks the conscience" even in the absence of torture, see United States v. Archer, 486 F.2d 670, 674-5 (2nd Cir. 1973); United States v. Russell, 411 U.S. 423, 430-1 (1973) and the present case is another good example of it. For here, the request by the American agents for the expulsion of Baeza to the United States was an open invitation to illegality, not only by its avoidance of the recognized forms of acquisition based on the extradition treaty or comity, but also because Chilean law does not permit expulsion to the United States.

Rather, Chilean law allows the expellee a choice of three countries, and it is rather obvious that if the law had been followed the United States could not obtain Baeza upon his

expulsion from Chile, since he clearly would not choose a country where his future home was likely to be a jail cell.

Initially, there was no reason why the United States could not seek the lawful extradition of Baeza. A valid treaty between the two countries exists (Exh. C, reproduced in appellant's appendix), and Agent Cecil testified that he was aware of the extradition treaty and that the DEA had previously made extradition requests of the Chilean government which had never been refused (H 75-6, 165). Though the treaty does not specifically provide for extradition for narcotics offenses, it does not exclude them either, and the success of the DEA in obtaining extradition obviously suggests that extradition was a lawful utilizable proceeding in such cases. Indeed, in Toscanino the Court also recognized that the irregular way the appellant was brought to the United States was unnecessary, because the treaty between the United States and Uruguay did "not specifically exclude narcotics violations so that a representative of our government might have been able to conclude with Uruguay a special arrangement for Toscanino's extradition . Cf. Fiocconi v. Attorney General of the United States, 339 F.Supp 1242, 1244 (S.D.N.Y. 1972)." 500 F.2d at 276, supra. Thus, under Fiocconi comity was also a proper vehicle for obtaining custody over Baeza, and, in view of the close working relationship between the agencies of the United States and Chile, it is realistically unlikely that comity would be refused.

Yet despite the availability of two lawful and

recognized forms of obtaining custody, the American agents pursued a course of conduct calculated to violate Chilean law. Indeed, the American request sought to have the Chileans breach their own law if they were to satisfy American wishes. There was no other possibility, since Chile could not legally expel Baeza to the United States. They could only expel him to a country of his choice, and his choice would not have been the United States.

The fact that the Chileans were obviously willing to violate their own law by expelling Baeza directly to America does not mitigate the responsibility of the American agents for the illegality. If anything, it compounds it. The Americans were surely aware of the penchant for lawless conduct on the part of the Chilean governmental authorities, as is amply acknowledged by Agent Cecil's awareness that the Chileans tortured people in custody (H 73-4). By asking the Chileans to give Baeza directly to the United States, or in the current phrase, by making an offer that could not be refused, the American agents encouraged the Chileans to violate their own laws and, essentially, aided and abetted in a violation of Chilean law. Indeed, the casual under the table manner in which the whole affair was carried out is striking. No official memorandum or letter asking to obtain custody was ever sent to the Chileans. No legal documents were ever filed by the Americans. Rather Agent Cecil simply telephoned a Chilean policeman and asked that Baeza be arrested and detained until he could be exported to the United States (H 167-8), as if he were a piece of merchandise. Our courts

should not permit American agents to invite, encourage and seek the violations of the laws of other countries. Indeed, to do so, in the often quoted words of Justice Frankfurter in Rochin v. California, 342 U.S. 165 (1952), does "more than offend some fastidious squeamishness or private sentimentalism about combatting crime too energetically. This is conduct that shocks the conscience."

POINT II

PURSUANT TO RULE 28(i) OF THE FEDERAL RULES OF APPELLANT PROCEDURE, APPELLANT BAEZA HEREBY ADOPTS THE BRIEFS AND ARGUMENTS OF THE CO-APPELLANTS, AS THEY MAY BE APPLICABLE TO HIM.

CONCLUSION

THE JUDGMENT BELOW SHOULD BE REVERSED WITH INSTRUCTIONS THAT THE COURT DECLINE PERSONAL JURISDICTION OF THE APPELLANT.

Respectfully submitted,

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